

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Notice of Proposed Rulemaking)	
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Appropriate Regulatory Treatment for)	CS Docket No. 02-52
Broadband Access to the Internet Over)	
Cable Facilities)	
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REPLY COMMENTS OF THE CITY OF ASHEVILLE, NORTH CAROLINA

These comments are filed by the City of Asheville, NC in support of the comments filed by the Alliance of Local Organizations Against Preemption (the "Alliance"). Like the Alliance, The City of Asheville believes that (a) local communities should be able to require cable operators to obtain additional authorizations to use and occupy public rights of way to provide cable services, and to enforce existing authorizations that have been granted for the service; (b) should be able to obtain fair and reasonable compensation for use and occupancy of the public rights of way to provide non-cable services; and (c) should be able to regulate cable companies in their provision of non-cable services, as provided under the Cable Act.

These comments will also provide information regarding the status of cable modem service in our community.

1. Our community and the status of cable modem service.

Asheville is a City of just under 70,000 citizens. It is served by Charter Communications, which has approximately 21,800 subscribers in the City of Asheville franchise area. The cable system serving our community offers subscribers approximately 72 basic and expanded basic channels in addition to several channels on their digital line-up with new digital offerings scheduled to come online in the next six months. Charter Cable also offers cable modem service extensively in our community.

2. Our franchise and cable modem service.

Our franchise was issued in 1998 with the intent that the cable operator would provide cable modem service throughout the community. Furthermore our cable services ordinance specifically includes revenue derived from cable internet service as part of the gross annual revenues subject to a franchise fee. Pursuant to that provision, we are entitled to receive franchise fees on cable modem service. We received approximately \$56,000 in cable modem franchise fees in 2001. These payments were made in consideration of the grant of the franchise. Our franchise was written to permit the operator to provide both cable services and other services, so long as the operator complied with the terms of the franchise. We estimate that we will lose \$544,000 over the next 8 years if we cannot charge a fee on revenues from cable modem service.

Neither our franchise requirements or required franchise fees have prevented or delayed the roll-out of cable modem service in our community. We believe our franchise requirements have, in fact, expedited the deployment and availability of cable modem services to our community.

3. How we regulate cable modem service.

We regularly receive complaints from customers regarding the services provided by cable operators. These include complaints about traditional video programming services in addition to those concerning cable modem services. On average we have received between four and six complaints per month regarding cable modem service outages or internet service related billing discrepancies. In the time since this FCC action, complaints related to cable modem service outages or related billing problems have doubled. Responding to these complaints requires significant staff time and effort.

There are many unique customer service problems associated with cable modem services. In addition, it is often difficult, if not impossible to separate regulation of cable modem service from the regulation of cable service in many critical respects:

- Cable modem service is marketed jointly with cable service.
- Equipment rental fees are not broken out by equipment type when reported to us.
- When we get complaints about promotional practices, the complaints often apply to both services.
- A single bill is sent for cable modem and cable services, so billing complaints involve both.
- P.E.G. fees apply to all cable customers regardless of the services they receive.

- Customer service calls go to a single number, so telephone answering policies affect both.
- Customer service standards are affected by the added burden of cable modem service issues.
- A customer must call a single location to schedule installation of cable service and cable modem service, and customer complaints about installations and missed appointments relate to both services.

As a result, when one service has problems, the quality of the other service can be affected. Customers have the expectation that they can make complaints to the City and expect some resolution, and as far as we can tell, at no time does the cable operator advise the customer that regulatory protections accorded with respect to cable service do not apply with respect to cable modem service. In our view, there is a substantial and continuing need to protect consumers of cable modem service, in light of the complaints we receive, and because of its close tie to video services.

Cable modem service is also subject to the following requirements under our franchise:

- The operator is required to provide cable modem service throughout our entire franchise service area.
- The operator is prohibited from discriminating against potential customers.
- The operator must promptly respond to and resolve all subscriber complaints and meet specific customer service standards.
- The operator must issue credit for verifiable outages of six (6) hours or more in duration for the levels of service affected by such outages.

4. Our community and broadband deployment.

Our community believes it is very important to encourage broadband deployment, and to encourage development of broadband applications. We also believe that in order to achieve the promise of broadband, broadband services have to be available to the entire community, as far as possible. We want to avoid knowledge and opportunity gaps created because some parts of the community have access to broadband information, while others do not.

To that end, our community devotes significant resources to take advantage of the information highway and to extend its benefits to all. The City of Asheville is continually improving service to our customers through our E-Gov system which allows customers to research legal and public safety information, report service outages or items needing attention, pay bills, retrieve payment records, and submit forms or applications over their personal or

publicly available computer 24 hours a day. We provide vital public information and educational programming through our Institutional network and P.E.G. channels. We make computer systems available at neighborhood community centers which are connected to the Internet over our institutional network. The City of Asheville has also included provisions in the franchise with our cable operator which requires them to provide free internet service to area libraries and schools.

The funds that we obtain from cable modem franchise fees can help support these and other activities. If we lose those funds, it will be more difficult to protect consumers, and to promote broadband deployment in this community. Furthermore, deregulation of cable modem services would likely make franchise requirements for broadband services in schools and libraries unenforceable.

Respectfully submitted,

James L. Westbrook, Jr., City Manager
City of Asheville, NC
P.O. Box 7148
Asheville, NC 28802
(828) 259-5604
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